

FOOD INDUSTRY INSPECTION IN JORDAN



Draft paper

*Review and evaluation of Jordanian
legislation that governs the process of
inspecting local food industry.*

Amman – April 1999

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INTRODUCTION

At the request of AMIR - Amman, Mid-Globe prepared this paper to state and analyze the process of inspection on all food-related activities; i.e. in health and trade.

In this paper, we have covered a number of legal issues, such as:

- ? The definition of food inspection according to the Jordanian legislation,
- ? The policy and objectives of the Government of Jordan (GOJ) with regards to public health in general and food safety in particular,
- ? The current situation in Jordan and the problems inherent in the system of actual practice and application of the mentioned policy and objectives. To this purpose, we have tackled the following issues:
- ? The process of inspection practiced by the various GOJ ministries, departments and agencies.
- ? The extent of authority given to these agencies by the law.
- ? The level of bureaucracy surrounding food inspection.

- ? The areas where legislation and regulations overlap.
- ? Penal parts of the law.
- ? Forms, fees and many other factors that effect and complement all the above issues.
- ? The food inspection regime and its application where we highlighted procedural defects, areas where ambiguous or wide authorities exist, and the different bodies armed with legal authority to inspect and the overlapping functions of the authorities.
- ? With this phase of the paper, we revised an issue paper on food inspection prepared by the Services Group (TSG) and developed a new paper in accordance with present legislation in Jordan.

OVERVIEW

Food Inspection is one of the most important measures the State takes to safeguard the health of its citizens and make certain that food is suitable for human consumption, and that it complies with the basic rules in place on food health and safety in the country.

This paper uses as a reference the information pertained in the food issue paper that was previously prepared by the Services Group, and seeks to study relevant legal rules that governs the issue of food inspection in Jordan.

A major objective of this paper was determining the clarity of such legal rules and their suitability to investment and investors who are the main subjects of these rules, taking Meat as the main example of application in our study.

In this context, this paper lists and analyzes existing Laws, Regulations, Rules and Instructions in the area of food inspection in Jordan. It focuses on such subjects as the actual definition of food inspection and the methods and criteria used by the various authorities to inspect. The paper addresses the powers of the parties authorized to inspect and the extent of their authorities. It also pinpoints in the process where the areas of authorities of the various GOJ agencies do overlap.

This paper also aims at finding ambiguous and passive areas of the law that could be identified and rectified once we can establish a clear and concise food inspection policy.

To carry out our tasks, Mid-Globe's team benchmarked the following actions:

1. Identify the parties that are involved in food inspection in Jordan, list all concerned ministries and find out the source of their authorization.
2. Determine the scope of food inspection in Jordan starting with the exact legal definition of food in the Jordanian law, legislation applied, the sites where inspections are conducted, and the purpose and procedure of inspection.

3. Identify legal problems that encounter the process of inspection in Jordan and other shortcomings such as the overlapping of authorities between various agencies and the ambiguity existing in the relative laws.

THE PARTIES INVOLVED IN FOOD INSPECTION IN JORDAN

In simply seeking a definition for food inspection in the Jordanian legislation, there appear a number of agencies authorized by their respective laws and regulations to inspect on food-related activities in the kingdom, including processing.

The authorities of each of these agencies are established either by laws, regulations, or rules.

Applicable Legislation on Food Inspection Authority

Laws and regulations applicable to food inspection are various, but those that were identified as the most applicable are listed below:

- ? Trade and Industry Law No. 18 of the Year 1998 that regulates the work of the Supply Directorate of the Ministry of Industry and Trade, which replaced the old Ministry of Supply and its laws and regulations.
- ? Public Health Law No 21 of Year 1971.
- ? Agriculture Law No. 20 of Year 1973 and its consecutive amendments.
- ? Veterinary Profession Practice Law No. 10 of Year 1988.
- ? Law No. 15 of Year 1987 of the Marketing of Agriculture Products Company.
- ? Free Zones Law No. 32 of Year 1984.
- ? Customs Law No 20 of Year 1998.
- ? Penal Law No. 16 of Year 1960.
- ? Standards and Metrology Law No. 15 of Year 1994.
- ? Crafts and Industries Law No. 6 of Year 1953.
- ? Food Health & Safety Regulations No. 8 of the Year 1994 based on Article 80 of the Public Health Law.
- ? Slaughterhouses in Greater Amman Municipality Regulations No. 1 of Year 1985 based on the Municipalities Law No. 29 of Year 1955.
- ? Slaughterhouses in Municipalities Regulations No. 42 of Year 1978.
- ? Health Quarantine at Aqaba Port Regulations No. 32 of the Year 1972 based on Article 6 of Aqaba Port Corporation Law No. 18 of Year 1959.
- ? Central Laboratories Regulations No. 56 of Year 1998.

- ? Labor Inspectors Regulations No. 56 of the Year 1996.
- ? Slaughterhouses Supervision Rules No. 3/5, based on Article 14 of the Veterinary Profession Practice Law No. 10 of Year 1988.
- ? Loading, Unloading, Storage and Clearance of Goods Rules, issued in accordance to the Ports Corporation Resolution No. 50/98 of 16/7/1998, based on Article 3 of the Loading, Unloading, Storage and Clearance of Goods at Aqaba Port No. 25 of Year 1998.
- ? Public Health Conditions for the Licensing of Food Factories and Industries issued in accordance to Article 12 of the Crafts and Industries Law No. 6 of Year 1953.
- ? Rules for the Licensing of the Usage of the Jordanian Quality Mark No. 7 of Year 1997.
- ? Rules and Conditions for the Storage of Foodstuff, issued by the Ministry of Health based on Article 3.2 of Standard No. 1/97.
- ? Rules and Conditions for the Storage of Foodstuff issued by the Ministry of Health, and published in the Official Gazette No. 3122 of Year 1983.
- ? Public Health Conditions for the Licensing of Food Factories and Industries, issued by the Council of Ministers in its meeting dated 22/1/1984.

It is without doubt that the sheer number of these laws and regulations and their respective agencies creates a structure of overlapping authorities and thus leads to a lack of coordination among these agencies. This, in turn, is creating chaos and disarray in legal applications and exercise of agency powers. This paper clarifies many of these issues on a later stage.

THE SCOPE OF FOOD INSPECTION PROCESS

Definition of Food

It is noticeable that there is no precise definition to what is considered "Food" in current Jordanian laws, nor is there a standardized methodology to the scope of the inspection process in terms of the sites that can or cannot be inspected.

This might have seemed normal in the first instance, until we laid our hands on certain loose definitions as to what can be considered "Food"; which in turn leaves the door open to the many official agencies to claim wide and parallel authorities to inspect.

This can be exhibited in the following argument. Article 2 of the Food Health and Safety Regulations defines "Food" in the same way it is defined by the Public Health Law as:

[a] *"Every substance or part of it used by humans to eat or drink, excluding medicine and water"*

(b) *"Any substance usually used in the making and preparation of human food"*.

Article 2 of the Slaughterhouses Regulations defined "Fresh meat" as: *"The flesh of animals and poultry that is slaughtered at the Municipality Slaughterhouses, or imported to it already slaughtered and refrigerated within a period not exceeding 48 hours."* Meanwhile, it defined "frozen meat" as, *"Flesh of animals, poultry and fish that are fetched to the Slaughterhouses in a frozen state"*.

However, in the Law of the Marketing of Agricultural Products Company, Article 2 defines Agricultural Products as *"Crops, and fresh or processed animal products"*.

Article 2 of the Customs Law No. 20 of Year 1998 defined "Goods" as: *"Any natural substance, animal, agricultural, or industrial products, including electrical energy"*.

Taking note of the definitions listed above, we come across varying interpretations of "Food", which enables different official agencies to interpret the term to fit their perceived authority. This, in turn, provides them with authorities to inspect a wider range of products, and, therefore, such actions result in overlaps between the authorities of different agencies

Authority to Inspect

Article 4/d, of the Law of Marketing of Agricultural Products Company (MAPCO), granted the company the authority to devise the standards of imported, exported or sold agricultural products, and the right to inspect so as to ensure compliance of these products with standards.

This could create a conflict of authority with other governmental agencies such as the Directorate of Supply, Standards and Metrology Institute, Ministry of Agriculture and Greater Amman Municipality.

An example of the conflicting authorities comes from Article 13 of MPACO's Law, which stated that: *"Notwithstanding any other piece of legislation, the employees and officials of the company, holders of a written authorization by the director of the company, have the right to enter places where agricultural products are gathered, stored or sold, to make sure that the rules of this Law are being complied with, and otherwise, take the appropriate measures against offenders."*

In the same manner, the Health Committee at Aqaba Port exercises its authority under mandate of Article 46 of the Regulations No. 32 of the Year 1972. The authority granted under this article empowers the Committee to verify health certificate of origins of the imported goods or to examine the validity of such goods by subjecting the cargo to laboratory tests prior to any clearing of goods by customs.

Legal Terminology Validating the Right to Inspect

Another obscure expression used in a number of legislation tackles the "suitability of the goods for human consumption." This is a wide expression, especially in the absence of a strict and unified legal definition for it.

We came across a number of legal provisions that included the expression on "suitability" without attempting to define it, such as the aforementioned Article 2 of the Slaughterhouses' Regulations that granted the sole right of inspection and approval of meat for public consumption to the Slaughterhouses themselves.

Furthermore, three other government agencies are sharing the same authority by the merits of their rights to ensure "suitability or fitness for human consumption". Article 64/b of the Public Health Law No. 21 of Year 1971, Article 190/a of the Agriculture Law No. 20 of Year 1973, and Article 16 of the Trade and Industry Law No. 18 of Year 1998, all provide for the right of inspectors of these ministries or agencies to inspect for "fitness or suitability for human consumption". In fact, this expression is a wide legal term lacking a uniform criterion for the exercise of authority, which leads to conflicts between these authorities. Additionally, the inspection function itself is unsystematic nor is it based on a uniform rule, which makes the process of inspection different from one inspector to another and truly subjective.

LEGAL PROBLEMS FACING FOOD INSPECTION IN JORDAN

In analyzing the process of food inspection in Jordan and taking the above legal issues into account, the wide scope of authority for "the right inspect" is tainted with a number of legal problems that may constitute obstacles in the way of full and proper implementation of relevant legislation.

These problems are:

Unlimited authorities

No legal grounds exist on the limitation of authorities that the different parties may exercise with food inspection. This paved the way for officials to exercise wide authorities over this issue. Each minister, and within his own Ministry's authority, has jurisdictional powers to order inspections and authorize whomever they wish to inspect at any given time, regardless of the qualifications and experience of the authorized person.

An example of such ministerial powers is article 8 of the Food Health and Safety Regulations that gave the Minister of health the right to authorize any of the Ministry's officials to inspect any factory, company or any place where food is being prepared, produced or sold.

This indicates that any official of the Ministry can be authorized to carry on inspections even if he works in public relations or the personnel department. This probably is not the case in practice, nevertheless, in theory it is possible. This is quite a risky situation as inspectors are expected to possess certain technical knowledge and experience that qualify them to perform their inspection in a proper fashion.

Another example of the wide authorities is what has been stated in article 14 of the Slaughterhouses Supervision Rules, which gives the Veterinary doctor the right to stop the slaughtering of any animal for

undetermined period of time in order to examine the animal and license the slaughtering. This period could be a day or it could be a year.

Article 9 of the Greater Amman Municipality Slaughterhouses Regulations gave the veterinary doctor the authority to seize all animals that are found unfit for human consumption and destroy them without granting any compensation to their owner. This power is indefinite, because the right to destroy is not specified by the legislation. Also, the right to destroy in the absence of the owner is a negative aspect. Thirdly, the right to protest before a committee is granted to the owner. (However, the committee mostly comprises of doctors from the same Veterinary Department whose decisions are not repealed.)

Another example is Article 7 of the Trade and Industry Law, which gives market inspectors a wide range of authorities, such as monitoring prices, making sure that food is fit for human consumption, taking appropriate measures, and referring offenders to courts.

Moreover, Article 16 of the same law gives market inspectors the right to impose penalties on any body who sells or stores for the purpose of selling any product that has passed its expiry date or is found to be "not fit for human consumption". The law did not specify the criteria that the inspector should take into consideration to reach such a decision.

In addition to the ministers, general directors, and officials of the various government agencies, the law gave Governors of various regions special rights to close premises for undetermined periods regardless of the degree of the offence. An example of this power is article 79 of Public Health Law, which gave Governors, and by recommendation of the district's medical officer or the local health authority director, the right to close offending premises until a decision is reached by the court.

This is a rather extreme type of authority. While the medical officer and the health authority director have the right to close the premises for one week only or cut the water supply on the premises for a week prior to referring the case to court, the Governor's authority is wider and unlimited to time.

An example of unlimited authority is the right of the Ministry of health officials in accordance with Article 69/3 of the Public health Law to take a sample of the food without any specific reference to the size of the sample or a price for the sample. Also, in accordance with Article 22 of the Right to Use the Jordanian Quality Mark of 1997, persons affected or harmed by actions resulting from the application of the Standards and Metrology Law are not allowed to seek any compensation for damages or harm from the Institute.

Conflict of legislation and authorities

In abolishing the Ministry of Supply and creating the Department of Supply under the Industry and Trade Law, the Law created confusion over the jurisdictions in governing supply issues. The new law is silent on the issue of the old rules and regulations that gave the officials of the Directorate of Supply their authorities to inspect under the old Supply Law.

In fact, this was apparent when market inspectors inspected certain items of food (like flour) and found out that these items were no longer part of their authority and that the inspection of these items was the responsibility of the Standards and Metrology Institute. This conflict in authorities remains unsolved and is referred for legal interpretation on case by case basis.

Legal texts may also conflict on one issue from a regulation to another or between regulations and instructions. For example, there is an apparent contradiction between Article 8 of the Greater Amman Municipality Slaughterhouses Regulations and Article 5 of the Slaughterhouses Supervision Rules. Article 8 restricts slaughtering of animals to the Municipality's Slaughterhouses, while Article 5 requires that private Slaughterhouses appoint doctors to supervise and inspect slaughtered animals. The contradiction in these two articles is the lack of clarity over the functions of private slaughterhouses and what they can do knowing that slaughtering is restricted to these of the Municipality's.

Silent Issues

It is noticeable that there are a number of obscure provisions pertained in legal texts over regulating the safety of foodstuff and the process of monitoring it. Obscurity gives the official authority a power that cannot be constrained or measured.

For example, Article 7/b of the Food Health and Safety Regulation states that: *"It is prohibited to sell or circulate foodstuff prior to its testing by the necessary means, and assuring its fitness for human consumption"*. The phrase "necessary means" in this case is not defined, and it opens the door for the use of all available testing methods.

Another example of unspecific conditions is found in Article 20/1 of the Health Rules and Conditions for Licensing of Food Factories. This article indicates that: *"Factories should conduct proper health inspections in addition to physical and chemical testing of raw material and final products to assure their fitness for human consumption"*. That said, the Article does not specify how the factory should conduct such measures, whether the testing should be done in governmental or private labs, whom should the results be presented to for evaluation, or the what the duration of the inspection and its frequency should be.

Furthermore, Article 20/3 of the same Rules requires the keeping of records of the inspections, and making them available for inspection by the respective bodies upon request. Yet, the clause failed to specify those respective bodies or if they have the right to conduct further checks.

Additional silent provisions are apparent in Article 22 of the Rules and Conditions for the Storage of Foodstuff, which stated that: *"a weekly inspection program should be in place at storing areas and that no violation should be made to the prescribed rules"*. However, the Article did not mention the party that is responsible to conduct such inspection, whether it is the responsibility of the factory owner or an official inspection body.

According to Article 3 of Regulation No. 25 on Good Loading, Unloading, Storage, and Exit of goods out of the Port of Aqaba, "if concerned authorities determine that the goods affect public health, storage of such goods is banned". However, unloading from ships on to trucks is possible pending approval and supervision by the concerned authorities. Here the article does not specify which competent or concerned authorities are to be involved, and what criterion should be used to measure the degree of effects on public health.

Article 5/c of the same Regulation bans the unloading of a container of imported goods if it is proven that its contents are not fit for human consumption or not compliant with standards and measures. This article does not elaborate on the concept of what is or is not fit for human consumption and which authority can make that determination.

Article 46 of the Regulation for Quarantine at the Port of Aqaba prohibits the clearing of any foodstuff or raw materials shipment until it is proven to the Health Committee, either by a Health Certificate or by lab testing of samples, that it is fit for human consumption. In this case, it is not indicated whether the presentation of a Health Certificate is sufficient enough and what issuing body is authorized to make that decision.

In some cases, there are silent issues concerning the scope of authorities granted to certain officials in authorizing the inspection process. For example, Article 248/a of the Customs Law grants the Minister of Finance the right to exempt ministries and other government agencies from complying with certain measures on clearing and documentation verification. The exemption would aim at facilitating their work without compromising on the duties and taxes applicable to the goods. However, In this article it is not clear whether the right to exempt also includes exempting these ministries and agencies from complying with the food inspection measures.

Overlap of Authorities

The overlapping of authority between different government agencies is an expected consequence of the number of agencies that can claim the right to inspect food.

An example of overlapping authorities is between the Ministry of Agriculture and the Ministry of Municipal and Rural Affairs and the Environment.

Article 176 of the Agriculture Law stated that slaughtering and skinning of animals should only take place in the places designed for that in various towns and villages and that the Minister of Agriculture is the authority on designating these places. These authorities overlap with those of the municipal councils where their law gave these councils the authority to designate the places for slaughtering, supervising, and monitoring the hygienic conditions of these places in their own town and villages. In this example the two ministries are exercising the same authority without any reference for coordinated activities between the two ministries.

Inspecting without the presence of the owner

Ambiguity in the laws over the authority of food inspection agencies is indicative in many legal texts governing the conduct of the inspection official on the premises of business activities. In one of the examples mentioned above, we addressed the right of the veterinary doctor to examine the meat without the presence of the owner. Yet, more examples of such authority are stated below.

Article 5/a of the Labor Inspectors Regulation, No. 56 of 1996, empowers the inspector to inspect any business activity alone or with the company of another government agent, regardless of the fact that the visit has been notified or not, or that the owner is present or absent during the visit. With this article in view, article 5/b of the same regulation also empowers the inspector to collect samples and take them for testing against suitability for human health whether the owner is present or not.

Article 66/c of the Customs Law No. 20 of year 1998 authorized the Customs Directorate to examine goods whether the owner of the goods is present or absent.

Both Public Health and Standards and Metrology Laws were silent on the issue of whether the taking of samples and testing can be conducted in the presence or absence of the owner.

Dormant Laws and Regulations

Despite the existence of certain laws and regulations that are designed to reduce unnecessary bureaucracy, these laws and regulations are not utilized.

An example of this kind of legislation is the Central Laboratories Regulations No. 58 for year 1998, which became effective at end of 1998. The Regulation defines the functions of the Central Laboratory as a nationally central testing body. The Regulation seeks to reduce the procedures on sample testing by designating the Central Laboratories as the only body authorized to do such checks, thus, eliminating the need to have other laboratories in the various ministries.

Although the regulations of this Laboratory are issued and enacted, the actual department is not established yet and other laboratories in various ministries are still receiving samples to be checked by their own separate laboratories.

Another example is that of the role of the Food Administration Council, whose authorities are stated in article 4/c of the Food Health and Safety Regulation. The Council should comprise members from different government agencies. Despite that, the Minister of Health continues to make decisions that, otherwise should be devised by the Council.

Moreover, article 10/d of the above mentioned Regulation requested that the Minister of health issue the necessary rules to activate these regulations which include the basis of food sample taking for of laboratory checks, re-checks or any other purpose. Asked about these rules, the Director of the Food Hygiene Directorate confirmed our

findings, where we established that there are dormant authorities in this sector, and that the rules governing these authorities are "under preparation". However, in the Regulation of 1994 on food health and safety, the Minister of Health was supposed to have devised the criteria on sample checking.

CONCLUSION & FINDINGS

Having engaged in this extensive legal research and conducted thorough crosschecks of the many laws, regulations, procedures and instructions involved in this issue, we determined that it is essential to have a centralized food regulation body in Jordan. Mid-Globe would be able to design, or to assist in the design of, a model for that centralized body.

The need for a centralized body is pressing not just to harmonize all these laws and regulations, but also to enable ministries and government agencies to define the boundaries for their powers and be able to cooperate or coordinate when their authorities overlap.

The proposed central body is needed to clear any ambiguity in the laws and regulations and to put dormant laws and regulations into effect. Furthermore, the Centralized body is needed to make the process of food inspection and control a modern process that is compatible with international laws.

The findings of this paper

- ? The process of inspection is not concise or defined despite the laws regulating it.
- ? There is no program specifically designed for inspection or the specialization governing the practice.
- ? Wide authorities exist with conflicting powers between the ministries and government agencies.
- ? Inactive laws and dormant regulations are part of the causes.
- ? Lack of coordination between the concerned authorities.